

DEPARTMENT OF FOOD AND AGRICULTURE

Marketing Branch
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Sacramento, CA 95814
Phone: (916) 341-6005
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December 21, 2004

**NOTICE OF PUBLIC HEARING
TO CONSIDER IMPLEMENTATION OF THE
“WINEGRAPE INSPECTION MARKETING AGREEMENT”**

If you do not purchase grapes from outside sources please disregard this notice, as the proposed implementation of this program does not affect you.

TO THE VINTNER/WINEGRAPE PROCESSOR ADDRESSED:

Notice is hereby given that the California Department of Food and Agriculture (CDFA) is calling a public hearing to consider implementation of the proposed “Winegrape Inspection Marketing Agreement”, a proposed program to be established pursuant to the provisions of the California Marketing Act (Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code). ***The proposed agreement is intended to replace the already existing Winegrape Inspection Program.***

The hearing has been requested by representatives from the winegrape industry and is scheduled as follows:

DATE / TIME	LOCATION
Date: January 21, 2005 Beginning at: 10 AM	Fresno County Farm Bureau 1274 West Hedges Avenue Fresno, CA 93728 (559) 237-0263

For a map and directions, please refer to the last page of this notice.

OVERVIEW OF THE PROPOSED PROGRAM

The specific language for the proposed program is enclosed. Following are some highlights of the proposal:

- The purpose of this proposal is to create a new structure to replace the existing winegrape inspection program. Although the proposed winegrape inspection agreement would work in a manner that would closely resemble the operations of the current program, industry representatives have asked the Department to consider implementing an agreement as a replacement Program. They have made said request because they generally consider marketing agreements to provide for a more effective and cost-efficient structure.

- The proposed program would only apply to those vintners that agree to participate. For the purposes of the Agreement “Signatory Vintners” are defined as vintners who have signed up to participate in the Program, and which purchase grapes from outside sources provided that said vintners pay for 50% of the cost of the inspection fees charged by the agreement to inspect the winegrapes being transacted.
- Agreeing to participate would entail signing an official assent form to be provided by the Department after the hearing.
- Just as under the current winegrape inspection program, the funds for administering this program would be generated by industry assessments. Such assessments would be generally levied equitably upon signatory vintners and the winegrape growers who sell to them.
- Should the Department implement the agreement:
 - An industry advisory board, resembling the committee that currently oversees the existing winegrape inspection Program, will direct the operations of the Program. The board will be made up of eight (8) signatory vintners and an equal number of winegrape growers. The Department would appoint all vintner and grower members and their respective alternates from nominations received from signatory vintners for that purpose.
 - An assent procedure will be conducted every five years among signatory vintners to determine whether the industry wishes the agreement to continue in operation.

HEARING PROCEDURE

At the hearing, CDFA staff will testify on the origin of the list used to mail this Notice of Public Hearing, and will receive testimony and evidence with respect to:

The production, marketing, and other economic conditions affecting the California winegrape industry and the effect of the proposed marketing agreement upon such conditions.

Whether the proposed marketing agreement is reasonably calculated to:

- Attain the objectives which are sought by the proposed marketing agreement
- Effectuate the declared purposes of the Marketing Act, and
- Protect the interests of consumers of California’s agricultural products.

Any relevant amendments to the proposed marketing agreement that may be offered.

Nominations for the representatives of the proposed ‘Winegrape Inspection Agreement’ Board will also be accepted during the hearing.

A transcript will be made of all testimony and evidence received at the hearing. Also, written comments will be accepted at CDFA if postmarked no later than January 21, 2005. The hearing transcript and all written comments will be considered by CDFA to determine whether or not to submit the proposed marketing agreement to an assent of industry organizations.

HEARING PREPARATION

At the hearing, supporters of the proposed program should provide testimony that substantiates why the program should be implemented. On the other hand, opponents of the proposed program should provide testimony that substantiates why the program should not be implemented. Following are some examples of questions that hearing witnesses may wish to consider in preparing their testimony.

- Is there industry support for this proposed change to the structure of the program? If yes, explain how you reached this conclusion. If no, why not?
- Would changing the structure of the Program to a marketing agreement improve the efficiency of the Winegrape Inspection Program? If so, how? If no, why not?
- Does the structure of the proposed agreement have the potential to successfully address present and future inspection needs of the winegrape industry?
- Can the proposed program assist the agricultural industry even though it does not require full industry participation?
- Will the proposed assessment provisions generate sufficient revenue to adequately fund the activities to be handled by the proposed marketing agreement?
- How are the interests of the different segments of the winegrape industry and of consumers protected under this proposal?
- What problems, if any, would the industry face if the marketing agreement is not implemented? Please provide specific examples.

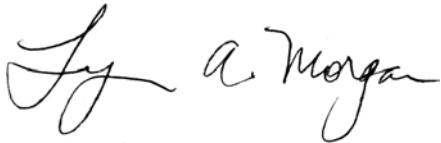
AFTER THE HEARING

If the testimony received at the hearing is supportive of the proposed program, the Department will open a sign up period for vintners. If a sufficient number of vintners become signatories the Department may implement the Agreement within a couple of months from the hearing.

All affected vintners as well as winegrape growers and other interested persons are invited to participate in this hearing. Written comments sent to this office (Attn: Kathy Díaz-Cretu) will be included in the official record if postmarked or otherwise received by January 21, 2005.

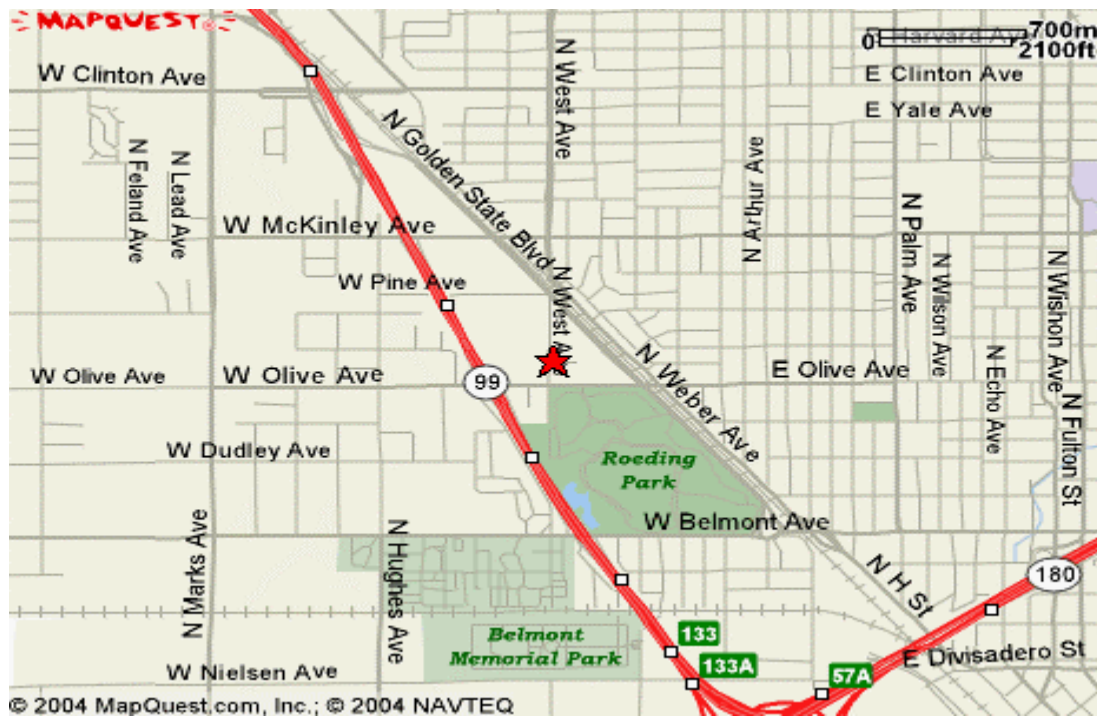
If you have any questions, please contact Kathy Diaz-Cretu, or myself, at this office.

Sincerely,

A handwritten signature in cursive script, reading "Lynn A. Morgan".

Lynn A. Morgan, Branch Chief
Marketing Branch

Enclosure



Directions:

From the North

Go South on Hwy 99.
Take the Olive Avenue exit.
Turn left onto N West Ave.
Turn right onto W. Hedges Avenue

From the South

Go North on Hwy 99
Take the Olive Ave exit.
Turn right onto W Olive Ave.
Turn left onto N West Ave.

Parking is available on the back of the building.

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH

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**PROPOSED WINEGRAPE INSPECTION
MARKETING AGREEMENT**

Effective *****

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WINEGRAPE INSPECTION MARKETING AGREEMENT

ARTICLE I

STATEMENT OF AGREEMENT

WHEREAS, it is provided in Section 58745 of the California Marketing Act of 1937 (the Act), being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code of the State of California, as follows:

58745. In order to effectuate the declared policy of this chapter, the Department may also, after due notice and opportunity for hearing, enter into marketing agreements with processors, distributors, producers, and others that are engaged in the handling of any commodity, which regulate the preparation for market and handling of such commodity. Such marketing agreements are binding upon the signatories to the agreement exclusively.

WHEREAS, in order to tend to effectuate the declared policy and purposes of the Marketing Act of 1937, the parties hereto desire to enter into a marketing agreement under the terms of said Act. The purposes of this Marketing Agreement are:

1. To recommend to the Department objective criteria and inspection procedures for the quality conditions determined by Chapter 3 of Division 16 of the Food and Agricultural Code.

As of the effective date of the Winegrape Inspection Marketing Agreement, and for all future harvests thereof, this Agreement shall apply to the fresh signatory grapes for which an inspection is requested by either the signatory vintner/processor or the grower, as defined in this document, provided that:

- a) said grapes are destined to be processed into wine or byproducts, and
- b) the winery requesting the inspection is a signatory, and
- c) the signatory vintner/processor has an inspection platform that meets the requirements of Cal-Code, and
- d) program records indicate that the financial responsibilities of the signatory vintner/processor affected by the inspection at matter have been met in a satisfactory manner.

NOW, THEREFORE, the parties agree as follows:

ARTICLE II

DEFINITIONS

Section A. DEFINITION OF TERMS. These definitions apply only to the Signatories to this Agreement:

1. "Act" means the California Marketing Act, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code.

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2. “Adequate Facilities” means facilities that meet the definition of Section 1652.1 of the Cal-Code regulations dealing with the inspection of grapes for wine and by products (Cal-Code Title 3, Division 3, Chapter 1, Subchapter 10, Article 1).
3. “Books and Records” means any approved budgets, invoices, cancelled checks, aggregate commodity statistics and any other documents, computerized data, and other writings, whether handwritten, typewritten, printed, photostatted, copied, or electronically stored to verify assessments paid to the Agreement.
4. “Byproducts” means any product derived from grapes.
5. “Cal Code”, unless the context indicates otherwise, refers to the California Code of Regulations as it pertains to the inspection of grapes for wine and byproducts, being Title 3, Division 3, Chapter 1, Subchapter 10, Article 1 of the aforementioned California Code of Regulations.
6. “Custom Crush” means crushing grapes for a person who retains ownership of the grapes.
7. “Department” means the California Department of Food and Agriculture.
8. “Fiscal Year” and “Marketing Season” are synonymous and mean the period beginning May 1 of any year and extending through April 30 of the following year.
9. “Fresh Grapes for Wine” or “winegrapes” are synonymous and mean fresh grapes destined to the production of wine or byproducts.
10. “Grower” means any person who produces grapes that are destined to be processed into wine or byproducts and who under the provisions of Chapter 3 of Division 16 (being Sections 41101-41211) of the Food and Agricultural Code utilizes the Program’s service and pays for one half (50%) of the cost of the inspection fees charged by the Agreement to inspect his/her winegrapes.
11. “Mandatory third party inspection” means mandatory inspection triggered by conditions addressed under Chapter 3 of Division 16 of the Food and Agricultural Code. Generally, the statute stipulates that a mandatory inspection is required when in the sales or the growing contract between growers and vintners/processors stipulating that a winery may deduct payment from a grower for the amount of soluble solids, defect or material other than grapes (MOG) found in a load.
12. “Inspection Fee” and “Assessment” are synonymous and mean the Program charges to provide inspection services to signatories.
13. “Inspection procedures” refers to the procedures to be followed for the inspection of signatory grapes pursuant to the provisions of Chapter 3 of Division 16 of the California Food and Agricultural Code and Title 3 of the California Code of Regulations.

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14. "Person" means an individual, partnership, firm, corporation, or any other business unit.
15. "Reinspection fee" means fees charged by the Program to reinspect one or more loads of winegrapes. The term "reinspection fee" is not synonymous with "inspection fee."
16. "Signatory winery", "signatory processor" or "signatory vintner" are synonymous and mean a vintner or processor, as applicable, who has signed this Agreement and pays for one half (50%) of the cost of the inspection fees charged by the Agreement to inspect the winegrapes being transacted.
17. "Signatory Grapes" are fresh grapes destined for processing into wine or byproducts and owned by a grower.
18. "Special Inspections" mean inspections conducted at other than the vintner/processor's inspection facilities.
19. "Special Inspection Fee" means the inspection fee charged by the Program to inspect signatory grapes at a facility other than the signatory vintner/processor's.
20. "Vintner/processor" means a person or entity who crushes grapes in California for wine or byproducts.
21. "Voluntary Inspection" the inspection of exempt grapes conducted by the Program at the request of one or more of the parties involved in the purchase transaction.
22. "Voluntary Inspection Fee" means fees charged by the Program to inspect grapes exempt from this agreement. The term "voluntary inspection fee" is not synonymous with "inspection fee".
23. "Wine" means grape wine, as defined by the California Business and Professions Code.
24. "Winegrape Inspection Advisory Board" and "Board" are synonymous and mean the Board established pursuant to the terms of Article III of this Agreement.
25. "Winegrape Inspection Marketing Agreement", "Agreement", "Winegrape Inspection Program" or "Program" means, unless the context indicates otherwise, this Marketing Agreement, affecting grape growers and vintners/processors, which is issued by the Department pursuant to the provisions of the Marketing Act.

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ARTICLE III

WINEGRAPE INSPECTION ADVISORY BOARD

Section A. ESTABLISHMENT AND MEMBERSHIP

1. It is hereby acknowledged that the provisions of Section 41194 of the Food and Agricultural Code which state that:

“For the purpose of carrying out this article, the director may establish necessary regulations, including reasonable fees which are to be charged for the services and for the acceptance of advance fees to effectuate the determination. Any fees which are so established shall be based upon the approximate cost of the service which is rendered. Fees shall be paid by the person who accepts delivery of the grapes. One-half of these fees may be deducted from money owed to the person who shipped the grapes.”

Furthermore, since vintners/processors are authorized to deduct one-half (1/2) of the cost of the inspection fees from money owed to the growers, the Department finds that this Agreement directly affects signatory vintners/processors and has an effect on the growers who delivered winegrapes to them, provided that they pay one half (50%) of the inspection costs.

2. Pursuant to the provisions of numeral 1 of this section, an Advisory Board, to be known as the California Winegrape Inspection Advisory Board is hereby established to assist the Department in the administration of this Agreement. The Advisory Board will consist of eight (8) vintners/processors and their respective alternate members and eight (8) growers and their respective alternate members. In the event that a member is not present at a meeting, his/her alternate may serve in the member's place.
3. The Department shall appoint all vintner/processor and grower members and alternates from nominations received from the signatory vintners/processors and from growers, respectively for that purpose. Nominations and appointments shall be conducted in the manner prescribed in Section B of this article.
4. In making appointments to the Board, the Department shall appoint only one (1) person to represent any one winery or grower firm, and shall make every effort to ensure that there is geographical representation from the major winegrape production areas in the state.
5. The term of office of each member of the Board shall be three years beginning April 1 and ending on March 31, or until their successors have been appointed and have qualified. However, to provide for a staggered term of office the appointees to the initial board shall serve as follows: four (4) vintner/processor members and four (4) grower members shall serve a three-year term; and four (4) vintner/processor members and four (4) grower members shall serve a two-year term. The determination about the length of the term of office to be assigned to each appointee shall be made by lot.

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6. Although there shall be no limit on the number of consecutive terms that a member or alternate may serve, the Board may recommend to the Department the removal of members and alternates who have not attended two or more consecutive board meetings without notifying the Program in advance or satisfactorily justify their absence after the meeting.
7. The Board members and alternates shall receive no compensation. However, they shall be entitled to reimbursement, upon request, for necessary expenses incurred by them in the performance of their duties.
8. Notwithstanding the provisions of numeral 2 of this section, upon recommendation of the Board, the Department may appoint one (1) additional member to the Board to represent the general public. Such person shall not be affiliated in any way with respect to the production or marketing of winegrapes, wine or byproducts and shall have all the rights and privileges, including voting, of any other member or alternate member of the Board.

Section B. NOMINATION OF MEMBERS AND ALTERNATE MEMBERS OF THE WINEGRAPE INSPECTION ADVISORY BOARD

1. Nominations of persons eligible to serve initially on the Board may be received at the public hearing held to consider the implementation of the Marketing Agreement. Should the Agreement be made effective, the nominations may be considered by the Department, as follows:
 - Vintner/processor nominees must be signatories in order to be eligible for appointment
 - grower nominees shall be able to provide verification documenting that they:
 - a) delivered winegrapes to a signatory vintner/processor during the last completed season, and
 - b) paid one half (50%) of the cost of the inspection fee
2. Grower and vintner/processor nominations for the initial Board may also be received from qualified growers and signatory vintners/processors during the sign-up process. Grower nominations received from growers whose qualifications are based on delivering grapes to non-signatory vintners/processors shall not be considered by the Department.
3. Subsequent to the appointment of the initial Board members, the Department shall appoint members and alternates from nominations received. The procedures for nomination of members and alternates shall be recommended by the Board and approved by the Department.

Section C. QUALIFICATIONS

In all cases, a person selected for appointed by the Department as a member or alternate of the Board shall qualify by providing to the Program such documents as may be required by the Board in order to document that he/she is meets the requirements set forth in Section B of Article III of this document.

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Members and alternates shall maintain their eligibility throughout their term. Loss of eligibility to serve shall automatically end the individual's appointment. Notwithstanding, the loss of eligibility by a vintner/processor shall not affect the eligibility of the growers who delivered winegrapes to his/her entity during the most recently completed marketing season.

Section D. VACANCIES

To fill any vacancies occasioned by the failure of any person appointed as a member or alternate of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate, a successor shall be appointed from nominations received from the remaining members of the Board in a manner consistent with the procedures adopted under Section B above.

The term of office for members and alternate members appointed pursuant to the provisions of this section will be in effect for the remainder of the term.

Section E. DUTIES AND POWERS OF THE BOARD

Subject to the approval of the Department, the Board's duties and powers shall include but not be limited to, the following:

1. Administering the provisions of this Agreement;
2. Recommending to the Department administrative rules and regulations relating to this Agreement;
3. Receiving and reporting to the Department complaints of violations of this Agreement;
4. Recommending to the Department amendments to this Agreement;
5. Initiating on behalf of the industry the process to petition to the Secretary to amend, adopt or rescind regulations in effect under Title 3 of the California Code of Regulations.
6. Assisting the Department in levying and collecting of assessments from signatories to cover expenses incurred by the Board and the Department in the administration of this Agreement.
7. Assisting the Department in the collection of such information and data as may be deemed necessary to the proper administration of this Agreement and the Act;
8. Developing and recommending to the Department procedures for the election of the Board's membership of officers, including a chairman and a vice-chairman, and such other officers as it may deem appropriate. May adopt such rules for the conduct of its meetings and functions hereunder as may be deemed desirable and necessary. Said recommendations shall include procedures to ensure that the chairman and vice-chairman alternate annually between the grower and vintner/processor members. In the years when a vintner/processor is the chairman,

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a grower member shall be the vice-chairman; and in years when a grower is a chairman, a vintner/processor member shall be the vice-chairman.

9. Keeping minutes, books and records which will clearly reflect all of its acts and transactions and to provide the Department copies of the minutes of all meetings duly certified by an authorized officer of the Board. Such minutes, books and records shall at all times be subject to examination by the Department or duly authorized representatives;
10. Employing such employees or contractors as it may deem necessary and to determine the compensation for and define the duties of such employees;
11. To recommend to the Department such committees and subcommittees as may be deemed necessary to assist the Board and the Department in performing the duties authorized pursuant to this Agreement. Said committees and subcommittees may include non-signatories. All committee actions shall be recommendations to the Advisory Board, subject to approval by the Department.
12. To receive, invest, borrow, and disburse funds pursuant to the provisions of Article 10 of the California Marketing Act, part of which clearly authorizes the board to establish and manage its own bank accounts which are outside of the State Treasury system.
13. To comply with all applicable conflict of interest laws.

Section F. EXPENSES OF MEMBERS OF THE BOARD

The members and alternates of the Board may be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder. The procedures for expense reimbursement shall be recommended by the Board and approved by the Department.

Section G. BONDS

The Department may require that any and all persons handling substantial funds collected pursuant to the provisions of this Program shall execute and deliver to the Department a bond or bonds in such amount as the Department may designate with surety thereon satisfactory to the Department conditioned upon the faithful performance of the duties.

Section H. FINANCIAL AUDITS

Pursuant to Section 58937(a) Board expenditures shall be audited at least once every two years by a certified public accountant.

Section I. PROCEDURE FOR BOARD RECOMMENDATIONS

1. A total of nine (9) members or voting alternates of the Board, including not less than four (4) growers and four (4) signatory vintners/processors shall constitute a quorum.

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2. Any recommendation of the Board to the Department shall require no less than four (4) affirmative votes of the grower members or voting alternates present and four (4) affirmative votes of the vintner/processor members or voting alternates present.

Section J. LIMITATION OF LIABILITY OF BOARD

Pursuant to Section 58847 of the California Marketing Act, neither members or alternates, nor the employees of the Board, are responsible individually in any way whatsoever to any person for liability on any contract or agreement of the Advisory Board approved by the Department.

ARTICLE IV

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS

Signatory vintners/processors shall maintain Books and Records reflecting their operations, including the itemized deduction of one half (50%) of the inspection fees from monies owed by growers. Signatory vintners/processors shall furnish to the Department or its duly authorized or designated representatives such Books and Records as may, from time to time, be requested relating to their operations under this Agreement, and shall permit the inspection, during normal business hours, by said Department or authorized representatives of such portions of their Books and Records as they relate to operations that are the subject of this Agreement.

Section B. CONFIDENTIAL INFORMATION

Any proprietary information obtained by any persons pursuant to the provisions of this Article, including but not limited to, data related to shipments, shall be confidential and shall not be disclosed except when required in a judicial proceeding.

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ARTICLE V

UNIFORM GRADING AND INSPECTION

Section A. DECLARATION REGARDING THE UNIFORM GRADING AND INSPECTION OF WINEGRAPES

In the State of California the average percentage of soluble solids, defect, or MOG in winegrapes are often the factors affecting the purchase price.

It is hereby declared that:

Consistent with Article I, when soluble solids, defect, MOG, or any other factors addressed by Chapter 3 of Division 16 of the Food and Agricultural Code affect the purchase price of winegrapes, the practice of signatory vintners/processors acquiring fresh grapes for wine or byproduct purposes without a third party inspection is unfair and detrimental to the effectuation of the purposes of the Act. Therefore, such a practice is declared to be in violation of the Program and Section 58888(b) of the Act.

Section B. INSPECTION REQUIREMENT

1. In order to avoid the aforementioned violations to the Program and the Act, all signatory grapes, except that product specifically exempted by this Agreement, are required to be inspected and certified by an authorized inspection agency in accordance with inspection rules and regulations recommended by the Board and approved by the Department.
2. The Board may provide for inspection and certification by an established and experienced inspection agency or, with the approval of the Department, hire its own inspectors.

Section C. VOLUNTARY INSPECTIONS

The Board may provide inspection of fresh grapes exempted by this Agreement or may provide inspection for conditions not mandated by regulation, provided the Program is properly reimbursed for such inspections by the vintner/processor or grower requesting such inspection. Utilizing the program's voluntary inspection services shall not constitute implicit participation in the agreement.

Section D. SPECIAL INSPECTIONS

As long as the Program is properly reimbursed for its costs, for the instances when inspection facilities are not available, the Board may develop and adopt procedures and guidelines to inspect signatory grapes at an adequate facility belonging to someone other than the signatory vintner/processor requesting the inspection. Under this Section the Program the vintner/processor requesting the inspection, and not the person who owns the inspection facility, shall be responsible for the payment of the inspection fee. The inspection of grapes

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that are to be custom-crushed by the vintner/processor who owns the inspection facility shall not be classed as a “special inspection”. Special inspections shall only be available to signatory vintners/processors at facilities where other signatory grapes are being inspected.

Section E. REINSPECTIONS

Growers and/or signatory vintners/processor may request the Program to reinspect one or more lots. The Program may develop and adopt procedures and guidelines to allow the Program to conduct said reinspections, whenever practicable, provided that the Program is properly reimbursed for such services by the party or parties requesting such service.

Section F. EXEMPTED PRODUCT

The loads of grapes for which price is not affected by the factors addressed by Chapter 3, Division 16 of the Food and Agricultural Code shall not be subject to mandatory inspection under this Agreement.

ARTICLE VI

GENERAL RESEARCH

Section A. RESEARCH AND DEVELOPMENT AND SURVEY/DATA GATHERING STUDIES. The Advisory Board is authorized, subject to the approval of the Department, to undertake or cause to be conducted, to administer, and to expend monies for research relating to inspection procedures of winegrapes. Such research activities may include, but shall not be limited to scientific research, development and survey/data gathering programs relating to inspection services. With the approval of the Department, the Board may expend money, enter into contracts with qualified research agencies, and do all things necessary and proper to conduct winegrape research, development and survey/data gathering studies, limited only by the provisions of Sections 58892 and 58892.1 of the Act.

Section B. DISSEMINATION OF RESEARCH INFORMATION. The Advisory Board, with the approval of the Department, may release, distribute, and disseminate the results of research studies, surveys/data gathering studies, and information obtained as a result of research, to appropriate parties.

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ARTICLE VII

BUDGETS, ASSESSMENTS, AND COLLECTION OF ASSESSMENTS

Section A. BUDGETS AND ASSESSMENTS

1. Prior to May 1 each year, and as may be necessary thereafter, the Board shall recommend to the Department a budget of estimated income, expenditure and reserves for the administration of this Agreement and for the activities authorized hereunder.
2. Prior to May 1 each year, the Board shall also recommend inspection fees calculated to provide adequate funds to defray the necessary expenses incurred in administration of this marketing agreement. In no case may the inspection fees exceed the maximum allowed under the Act. Upon approval of the budget and assessment by the Department, the Board may incur expenditures in accordance therewith.

Prior to May 1 each year the Board shall recommend to the Department the inspection fee per ton of winegrapes to be inspected as well as the inspection fee for special inspections. These inspection fees constitute the entire "assessment" as that term is used in the Act. At that time the Board shall also recommend the fees for reinspections and voluntary inspections.

Section B. PAYMENT AND COLLECTION OF ASSESSMENTS

1. The obligation to remit assessments under this Program applies to signatory vintners/processors only. Pursuant to the provisions of Section 58929 of the Marketing Act inspection fees levied pursuant to this Agreement shall be the obligation of every signatory vintner/processor and shall be due and payable at the time and in the manner specified by the Board.
2. To facilitate collection, each signatory vintner/processor shall pay on a weekly basis the entire applicable assessment on all winegrapes inspected at the rates approved by the Department pursuant to the provisions of this Program. The signatory vintner/processor shall deduct any inspection fee paid for and on behalf of the grower from the purchase price owed by the vintner/processor to the grower. The Department shall verify that proper payment has been made by vintners/processors for and on behalf of growers. In any event of failure of a signatory vintner/processor to pay any assessment payable hereunder, the Department may file a complaint against such person in a state court of competent jurisdiction for the collection thereof, pursuant to the provisions of Section 58929 of the Act. The Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10%) of such unpaid assessment.

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Section C. DISPOSITION OF FUNDS

1. Any monies collected by the Board pursuant to the provisions of this Agreement shall be deposited in accordance with the provisions of the Act, allocated to this Agreement and disbursed only for the necessary expenses incurred or approved by the Department with respect to this Agreement. Said disbursements or expenditures of money so deposited shall be in accordance with rules and regulations prescribed by the Department in accordance with the provisions of this Agreement and the Act.
2. Any monies remaining from assessments, collected pursuant to this Agreement, upon recommendation by the Board and approval by the Department, may be refunded at the close of any Marketing Season upon a pro rata basis to all Signatories from whom such assessments were collected; or such monies, upon recommendation of the Board and approval by the Department, may be carried over in reserve into the next succeeding Marketing Season. Inspection fees resulting from reinspections as well as from special and voluntary inspections are not refundable.
3. Upon termination of this Agreement, any and all monies and property remaining and not required by the Department to defray the expenses of this Agreement, including termination costs, shall be transferred to the Department and shall be utilized to reinstate the Winegrape Inspection Advisory Committee, pursuant to the provisions of Section 41201.5, et seq. of the Food and Agricultural Code.

ARTICLE VIII

APPEALS

Section A. APPEALS

Any Signatory to this Agreement may petition the Department to review any order, recommendation, or action of the Board approved by the Department. Any such appeal shall be conducted pursuant to the Grievance Procedures as detailed in the version of the Marketing Branch Policy Manual current at the time, as well as any other procedures prescribed at the time by the Department.

Section B. EFFECT OF APPEAL

Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the action of the Board, approved by the Department. The Department shall, if the facts stated show reasonable and valid ground, grant any such petition.

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ARTICLE IX

PARTICIPATION

Section A. NEW SIGNATORIES AND PARTICIPATION

Vintners/processors may become signatories to this Agreement during the period of time that the Department designates as the initial assent period by filing with the Department a properly executed copy of this Agreement and thereupon shall immediately become subject to the rights, duties, privileges, and immunities provided for in this Agreement.

Additional vintners/processors may become signatories to the Agreement at any time by filing a properly executed copy of this Agreement with the Board or one of its duly appointed representatives.

Section B. WITHDRAWAL FROM PARTICIPATION

Once a vintner/processor becomes a signatory his/her participation on the Program will automatically renew yearly, unless he/she asks to be released from the agreement.

Release from the Agreement may be obtained, provided that a Signatory is not in violation of the provisions of this Agreement and has fulfilled all of his or her obligations, including payment of any assessments imposed pursuant to this Agreement, under any of the following conditions:

1. By filing with the Department a written request for withdrawal no less than sixty (60) days prior to the end of the then current Marketing Season, with the release to become effective at the beginning of the succeeding Marketing Season.
2. Immediate withdrawal may be effective when a signatory vintner/processor goes out of business and gives notice thereof to the Board in writing. The change in the status of the vintner/processor does not affect the "grower" status of the growers classed as such under numeral 8, Section A of Article I of this Agreement.
3. The Department may terminate this Agreement with respect to any Signatory for cause as set forth in Article XI hereof.

ARTICLE X

IMMUNITIES

Section A. ANTITRUST LAWS

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Trade Practices Act, or any rule or statutory or common law against monopolies or in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Agreement and in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceedings, to the extent set forth in the Act.

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Section B. DURATION OF IMMUNITIES

The benefits, privileges and immunities conferred by virtue of the provisions of this Marketing Agreement shall cease upon its termination, except with respect to acts done under and during the time the provisions hereof are in force and effect.

ARTICLE XI

COMPLIANCE OF CONTRACTING PARTIES

Section A. AGREEMENT TO COMPLY

Each Signatory to this Agreement hereby agrees to be bound by and to comply with all the provisions of this Agreement, the California Marketing Act, and all relevant rules and directives from the Department.

Section B. RIGHT OF INJUNCTION

In the event of a violation or threatened violation of this Agreement, or any rule or regulation made effective hereunder, the Department may request the Attorney General of California to file an action in the Superior Court of this State for an injunction. All remedies provided in law or equity shall be available to enforce the provisions of this agreement.

Upon compliance with Section 527 of the Code of Civil Procedure of the State of California, the Court may issue a temporary restraining order and preliminary injunction as in other actions for injunctive relief; and upon trial of such action, if judgment be in favor of the plaintiff, the court shall permanently enjoin the defendant from further violations.

ARTICLE XII

SEVERABILITY

Section A. SEVERABILITY

If any section, sentence, clause or part of this Agreement is for any reason held to be invalid, or the applicability thereof to any person, circumstance, or thing is held to be invalid, such decision shall not affect the remaining portions of this Agreement, and the invalid provision shall be reformed, if legally possible, so as to effectuate the intent of the provision to the maximum extent permissible by law.

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ARTICLE XIII

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

This Agreement shall become effective on the date specified by the Department, and upon notification to the parties hereto in accordance with the provisions of Section 59111 of the Act, shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act. At least once each five (5) years, a public hearing shall be held to determine whether the Agreement shall be continued. If the Department finds after the public hearing that the Agreement is effectuating the purposes of the Act, it shall continue the Agreement.

Section B. TERMINATION

The Department shall suspend or terminate this Agreement or any provision hereof whenever it finds that the Agreement does not tend to effectuate the declared purposes of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT

Unless otherwise expressly provided in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of this Agreement shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provision of this Agreement not so amended, suspended, or terminated; or (b) release, condone, or dismiss any violation of this Agreement occurring prior to the effective time of such amendment, suspension or termination; or (c) affect or impair any rights or remedies of the Department or of any person with respect to such violation; or (d) affect any liabilities pursuant to the provisions of this Agreement.
